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10 | Attorneys for Plaintiffs

**ARIZONA SUPERIOR COURT  
MARICOPA COUNTY**

14 American Civil Liberties Union of Arizona  
and Sean Holstege,

No.

16 || Plaintiffs,

17 | V.

18 William Montgomery, in his official  
19 capacity as Maricopa County Attorney  
and Maricopa County Attorney's Office,

## Defendants

# **COMPLAINT FOR STATUTORY SPECIAL ACTION**

and

## **APPLICATION FOR ORDER TO SHOW CAUSE**

## Introduction

24 Plaintiff Sean Holstege is a freelance journalist who relies on public information to  
25  
26 do his job. In 2018, Plaintiff American Civil Liberties Union of Arizona (“ACLU of

1 Arizona”) hired him to produce a report on a topic of vital public importance: the  
2 performance of county attorneys across the state. To help make that happen, Mr. Holstege  
3 sent a public records request over seven months ago, in October 2018, to Defendant  
4 Maricopa County Attorney’s Office (“MCAO”) for basic information about how that  
5 office functions, including policies, budgets, and data on individual criminal cases. But  
6 after numerous follow-ups from Mr. Holstege, and little to no substantive responses from  
7 MCAO, Mr. Holstege has received exactly one document. He is still waiting for the rest.  
8

9 1. Defendant County Attorney William Montgomery and his office control critical  
10 elements of the criminal justice system in Arizona, from who gets charged to how long  
11 they are detained pretrial to what discovery they receive and when. Mr. Holstege and the  
12 ACLU of Arizona sent their request to educate themselves and the public on perhaps the  
13 most powerful actors in that system: the prosecutors.  
14

15 2. Defendants refusal to comply with the request violates Arizona’s public records  
16 law (“PRL”), in which “[t]he legislature . . . established a policy of presumptive access to  
17 public records, *Primary Consultants, L.L.C. v. Maricopa Cty. Recorder*, 210 Ariz. 393,  
18 396-97, ¶ 9 (App. 2005) (citing *Carlson v. Pima Cty.*, 141 Ariz. 487, 491 (1984)),  
19 including the ones Mr. Holstege requested over seven months ago. The law also requires  
20 the government to “promptly” disclose those records. A.R.S. § 39-121.01(D)(1).  
21 However, in over seven months, Defendants have produced exactly *one* record—a staff  
22 roster for a single year within the six-year date range requested.  
23

1       3. Defendants have failed to furnish any of the remaining records—much less furnish  
2 them “promptly”—and have not provided any legitimate explanation for why they are  
3 being withheld. Arizona courts have held that far shorter delays than seven months violate  
4 the PRL, *see, e.g.*, *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 539-47, ¶¶ 18-  
5 52 (App. 2008), and this case requires the same result.  
6

7       4. Mr. Montgomery often impedes attempts to gather public information. For  
8 example, last year news outlets reported that he threatened police departments with  
9 financial consequences if they did not let his office control whether police records were  
10 disclosed under the PRL.<sup>1</sup> He also did not respond to a request for documents regarding  
11 the internal investigation into Assistant County Attorney Juan Martinez, who has a history  
12 of confirmed misconduct.<sup>2</sup> Mr. Montgomery even had the gall to assert that opponents  
13 of his policies, practices, and activities are basing their objections on “myth and rhetoric  
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20       <sup>1</sup> See Jason Pohl, Uriel J. Garcia, Perry Vandell, and Michael Kiefer, *Maricopa County*  
21 *attorney seeks to usurp police control of records, video*, THE ARIZONA REPUBLIC  
22 (May 20, 2018),

23 <https://www.azcentral.com/story/news/local/phoenix/2018/05/21/maricopa-county-attorney-bill-montgomery-police-records-video/624111002/>.

24       <sup>2</sup> See Michael Kiefer, *Judge grants Maricopa County Attorney’s request to seal documents on prosecutor’s conduct*, THE ARIZONA REPUBLIC (Dec. 2, 2018),  
25 <https://www.azcentral.com/story/news/local/phoenix/2018/12/02/maricopa-county-attorney-bill-montgomery-report-jodi-arias-prosecutor-juan-martinez-conduct/2152827002/>.

1 . . . with no data to support it”<sup>3</sup>—while he simultaneously fights tooth and nail against  
2 requests for such data, including the request at issue here.  
3

4 5. Indeed, when Mr. Montgomery’s office first received Plaintiffs’ request, the office  
5 admitted that responses typically take “3-5 months.” In other words, Defendants  
6 effectively deny every request they receive via delay. And, in this case, they did not even  
7 honor their own months-long deadline.  
8

9 6. “Democracies die behind closed doors,” *Detroit Free Press v. Ashcroft*, 303 F.3d  
10 681, 683 (6th Cir. 2002), and Mr. Montgomery and his office have shut the door in the  
11 public’s face. Intervention from this Court is therefore necessary to ensure that  
12 Defendants comply with the law and release the requested information immediately.  
13

#### 14 **Parties and Jurisdiction**

15 7. Plaintiff Sean Holstege is a freelance investigative reporter and researcher hired by  
16 the ACLU of Arizona to investigate the policies and practices of elected prosecutors in  
17 Arizona.  
18

19 8. Plaintiff ACLU of Arizona is a nonprofit, civil-rights organization that has  
20 furthered the public interest and defended individual rights in Arizona through litigation,  
21  
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23  
24 <sup>3</sup> See Paulina Pineda and Katie Campbell, *Arizona resistant to change in ‘tough-on-*  
25 *crime’ sentencing laws*, ARIZONA CAPITOL TIMES (Mar. 23, 2018),  
26 <https://azcapitoltimes.com/news/2018/03/23/arizona-doug-ducey-bill-montgomery-david-stringer-will-gaona-caroline-isaacs-kurt-altman-resistance-to-criminal-justice-reform/>.

1 legislation, public education, and other methods for decades. Protecting and ensuring  
2 fairness in Arizona's criminal justice system is among the ACLU of Arizona's strategic  
3 priorities areas. The ACLU of Arizona is also committed to ensuring government  
4 transparency and accountability, particularly when government actions affect civil rights  
5 and civil liberties.

7  
8 9. Defendant William Montgomery is the elected Maricopa County Attorney and an  
9 "officer" as defined in A.R.S. § 39-121.01(A)(1).

10  
11 10. Defendant Maricopa County Attorney's Office ("MCAO") is a "public body" as  
12 defined in A.R.S. § 39-121.01(A)(2).

13  
14 11. Mr. Holstege brings this action and invokes the jurisdiction of this Court pursuant  
15 to A.R.S. § 39-121.02 and Rules 1 and 4 of the Arizona Rules of Procedures for Special  
16 Actions.

17  
18 12. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of the Arizona Rules of  
19 Procedure for Special Actions.

20  
**General Factual Allegations**

21  
22 13. On October 16, 2018, Mr. Holstege submitted a records request to MCAO. *See*  
23 Exhibit A (hereinafter, "Request"). The Request sought records related to six categories  
24 of information from January 1, 2013, to the present:

- 25  
26 a. MCAO's case management system;

- 1        b. Information about each criminal case prosecuted by MCAO, including case  
2                  number, charge(s), disposition, and demographic information of each  
3                  defendant;
- 4
- 5        c. Information about charges declined;
- 6
- 7        d. Personnel and discipline issues related to prosecuting attorneys in MCAO;
- 8
- 9        e. MCAO's policies, procedures, guidelines, and training materials covering  
                topics like bail, plea bargaining, and bias; and
- 10
- 11      f. Administrative and budgeting information.

12     14. On October 31, 2018, having received no response or acknowledgment of receipt  
13                  of the Request from MCAO, Mr. Holstege sent an email requesting that MCAO  
14                  acknowledge receipt of the Request and advise him of when to expect compliance. *See*  
15                  Exhibit B.

16     15. On November 1, 2018, MCAO acknowledged receipt of the Request, noting that  
17                  "it is not uncommon for the turnaround time for most [public record requests] to be 3-5  
18                  months." *See* Exhibit C.

19     16. In response, Mr. Holstege asked if some records could be provided before others.  
20                  He received no reply. *See* Exhibit D.

21     17. Nearly four months later, on February 26, 2019, Mr. Holstege sent an email to  
22                  MCAO again asking for an update on when MCAO would comply with the Request. *See*  
23                  Exhibit E.

18. In response, MCAO claimed that they had been “chipping away at” the Request. MCAO also stated that “[s]ome of the items cannot be provided and some can be provided, although in abbreviated/different format than requested,” but did not specify which items could be provided, which could not, and which could be provided in a different format. *See id.*

19. On April 1, 2019, Mr. Holstege again emailed MCAO about the Request, noting that it was made almost six months earlier. Mr. Holstege requested clarification on when he would receive documents and asked, “which items will not be released . . . [a]nd why?”

*See Exhibit F.*

20. On April 3, 2019, MCAO informed Mr. Holstege that the Request was “not completed yet,” but provided him with “one datapoint”: a list of staff prosecutors, including their name and salary, for only one year of the requested range. *See Exhibit G.*

21. Again, the office provided no explanation for why it was not furnishing the remainder of the requested documents.

22. On April 10, 2019, Mr. Holstege again inquired about a timeline for receiving the documents and asked whether the documents would be released “all at once or in tranches.” *See Exhibit H.*

23. Mr. Holstege received no response to his April 10, 2019 email.

1 24. On April 26, 2019, Mr. Holstege sent a letter to MCAO demanding that it  
2 immediately furnish the remaining records that he requested on October 16, 2018. *See*  
3 Exhibit I. Defendants have not responded to this letter.  
4

5 25. To date, Defendants have failed to comply with the Request and have provided no  
6 explanation for this failure.  
7

8 26. It has been over 200 days since Mr. Holstege first submitted the Request.

### 9                   **Arizona Public Records Law**

#### 10                  *Failure to Promptly Produce Records*

11 27. Arizona's Public Records Law ("PRL") requires public officers like Mr.  
12 Montgomery and public bodies like MCAO to maintain "all records . . . reasonably  
13 necessary or appropriate to maintain an accurate knowledge of their official activities and  
14 of any of their activities which are supported by monies from this state or any political  
15 subdivision of this state." A.R.S. § 39-121.01(B).  
16

17 28. The PRL serves to "open government activity to public scrutiny." *Griffis v. Pinal*  
18 *Cty.*, 215 Ariz. 1, 4, ¶ 11 (2007), and recognizes the importance of transparency in a  
19 democracy by mandating that the public have broad access to "official records and other  
20 government information so that the public may monitor the performance of government  
21 officials and their employees." *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351,  
22 ¶ 33 (App. 2001) (citation omitted).  
23  
24

1 29. Arizona's public policy further favors disclosure of records. *Primary Consultants*,  
2 *L.L.C. v. Maricopa Cty. Recorder*, 210 Ariz. 393, 396-97, ¶ 9 (App. 2005) (citing *Carlson*  
3 *v. Pima Cty.*, 141 Ariz. 487, 491 (1984)). The burden of disclosure falls "squarely upon"  
4 public officials. *Cox Ariz. Publ'ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993). This burden  
5 includes the requirement to "establish the adequacy of [the] search." *Phoenix New Times*,  
6 217 Ariz. at 539, ¶ 16 (citations omitted).

9 30. County attorneys and their offices are not exempt from the PRL or its promptness  
10 requirement: "There is no statutory right created to allow the county attorney to limit the  
11 scope of public interest in public business." *Star Publ'g Co. v. Pima Cty. Attorney's*  
12 *Office*, 181 Ariz. 432, 434 App. 1994). And "[u]nlike public information statutes in some  
13 other jurisdictions, Arizona's statute specifies that when records are subject to disclosure  
14 the required response is the *prompt and actual production* of the documents." *Phoenix*  
15 *New Times*, 217 Ariz. at 538, ¶ 12 (emphasis added). The plain language of the PRL  
16 requires the custodian of public records to "promptly" furnish them upon request. A.R.S.  
17 § 39-121.01(D)(1). Arizona law defines the word prompt as "'quick to act or to do what  
18 is required' or 'done, spoken, etc. at once or without delay.'" *W. Valley View, Inc. v.*  
19 *Maricopa Cty. Sheriff's Office*, 216 Ariz. 225, 230, ¶ 21 (App. 2007) (citation omitted).

1     31. The Arizona Supreme Court has found that a delay of just 49 days is not prompt  
2 and “wrongful.” *Phoenix New Times*, 217 Ariz. at 546, ¶ 45.<sup>4</sup> Defendants have failed to  
3 fully respond to Plaintiffs’ Request for over 200 days.  
4

## *Attorney's Fees and Costs*

32. Upon prevailing in a lawsuit arising out of its public records request, a plaintiff is  
7 entitled to an award of attorney's fees and costs. *See A.R.S. §§ 39-121.02, 12-348, 12-*  
8  
9 341, and 12-2030.33.

10       33. Access to records is “deemed denied” if the custodians of the records fail to  
11 promptly produce them. A.R.S. § 39-121.01(E). This is true here, and therefore Plaintiffs  
12 are entitled to attorney’s fees and costs.  
13

## *Right to Speedy Return on Order to Show Cause*

16 34. Because this is a statutory Special Action, Plaintiffs are entitled to a “speedy return  
17 date” on their application for an order to show cause. Ariz. R.P. Spec. Action 4(c); *see*  
18 *also* Ariz. R. Civ. P. 7.3(a) (authorizing a superior court judge to “issue an order requiring  
19 a person to show cause why the party applying for the order should not have the relief it  
20 requests in its application”).  
21

<sup>4</sup> Only one of the Sheriff's Office's responses in *Phoenix New Times* was deemed prompt under the law: the one the office responded to "on the same day as the request." 217 Ariz. at 544, ¶ 40.

1                   **APPLICATION FOR ORDER TO SHOW CAUSE**

2                   As set forth in Plaintiffs' Complaint for Special Action Relief, Defendants are  
3 plainly prohibited by law from withholding the requested records. Accordingly, pursuant  
4 to Rule 6(d), Ariz. R. Civ. P., and Rule 4(c), Arizona Rules of Procedure for Special  
5 Actions, it is appropriate and proper for this Court to issue an Order to Show Cause why  
6 the requested relief should not be granted.  
7

8                   **WHEREFORE**, Plaintiffs Sean Holstege and the ACLU of Arizona respectfully  
9 request that this Court award the following relief:

- 10                  1. Issue an order directing Defendants Maricopa County Attorney William  
11                   Montgomery and the Maricopa County Attorney's Office to immediately  
12                   provide copies of the public records requested on October 16, 2018 in Exhibit  
13                   A, pursuant to A.R.S. §§ 39-121 through 39-121.03;  
14                  2. Award Plaintiffs their taxable costs in this action and reasonable attorneys' fees  
15                   pursuant to A.R.S. §§ 39-121.02, 12-348, 12-341, and 12-2030.33 and Rule 4(g)  
16                   of the Arizona Rules for Special Actions, and;  
17                  3. Grant Plaintiffs such other and further relief as may be just and proper in these  
18                   circumstances.

1 Respectfully submitted this 22<sup>nd</sup> day of May, 2019.

2 By /s/ Jared G. Keenan

3 Jared G. Keenan

4 Kathleen E. Brody

5 American Civil Liberties Union Foundation of Arizona

6 Somil Trivedi

7 (pro hac vice application forthcoming)

8 American Civil Liberties Union Foundation

9 *Attorneys for Plaintiffs Sean Holstege and*

10 *ACLU of Arizona*